

**Island of Guernsey**

**Ordinance of the States**

[ ] 202[ ]

**Made..... [insert date], 202[ ]**

**Coming into Operation .... [insert date] 202[ ]**

**The Single Use Plastics Ordinance, 202[ ]**

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## SINGLE USE PLASTICS (GUERNSEY) ORDINANCE 202[ ]

**THE STATES**, in pursuance of their Resolution of the [ Date], and in exercise of the powers conferred on them by sections 3, 33(1), 39, 41, 58-62, 64, 69(2) and 72 of the Environmental Pollution (Guernsey) Law, 2004 and all other powers enabling them in that behalf, hereby order: -

### 1. INTERPRETATION

#### 1.1 In this Ordinance:

“**the Law**” means the Environmental Pollution (Guernsey) Law, 2004;

“**authorised officer**” means a person authorised by the Director under Section 3 of this ordinance (authorised officers);

“**catering establishment**” means a restaurant, canteen, club, public house or similar establishment (including a vehicle or a fixed or mobile stall) which supplies food or drink that is ready for consumption without further preparation;

“**Committee**” means the States Advisory and Finance Committee;

“**compliance notice**” has the meaning given by paragraph 1 (imposition of a variable monetary penalty or compliance notice) of Schedule 3 (enforcement and civil sanctions);

“**Director**” means the director of environmental health and pollution regulation appointed in accordance with the Law.

“**end user**” means any person to whom a product is supplied, other than —

1.1.1 for the purpose of supplying it, in the course of a business or the activities of a charitable or non-profit organisation, to another person; or

1.1.2 for the purposes of a manufacturing process;

“**final notice**” means a notice under paragraph 3 (final notice) of Schedule 3 (enforcement and civil sanctions);

“**enforcement undertaking**” means an undertaking given under Section 6 (enforcement undertakings) of Schedule 3 (enforcement and civil sanctions);

“**excluded bag**” means a bag of a description set out in the table in Part 1 (single use carrier bags) of Schedule 2 (exemptions);

“**health professional**” means —

1.1.1 a registered medical practitioner;

1.1.2 a registered nurse or midwife;

1.1.3 a recognised within the meaning of the Doctors, Dentists and Pharmacists Ordinance 1987;

1.1.4 a recognised pharmacist or pharmacy technician within the meaning of the Doctors, Dentists and Pharmacists Ordinance 1987;

1.1.5 a registered dietician, registered occupational therapist or registered physiotherapist;

“**level 5 on the uniform scale of fines**” means level 5 set out in the Uniform Scale of Fines (Bailiwick of Guernsey) (Amendment) Ordinance 2006 or any amendment thereof;

“**medical device**” means any instrument, apparatus, appliance, material or other article, whether used alone or in combination, together with any accessories, which;

1.1.1 is intended by the manufacturer to be used for human beings for the purpose of:

- (a) diagnosis, prevention, monitoring, treatment or alleviation of disease;
- (b) diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap;
- (c) investigation, replacement or modification of the anatomy or of a physiological process; or
- (d) control of conception; and
- (e) does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, even if it is assisted in its function by such means, and includes devices intended to administer a medicinal product or which incorporate as an integral part a substance which, if used separately, would be a medicinal product and which is liable to act upon the body with action ancillary to that of the device;

“**medical purposes**” means the purposes of preventative medicine, medical diagnosis, medical research and the provision of medical care and treatment;

“**notice of intent**” means a notice served under paragraph 2 (notice of intent) of Schedule 3 (enforcement and civil sanctions);

“**recipient**” means the person on whom a notice of intent is served under paragraph 2 (notice of intent) of Schedule 3 (enforcement and civil sanctions);

“**plastic**” means a material consisting of polymer as defined in Article 3(5) of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as amended by EU Commission Regulations from time to time, to which additives or other substances may have been added, and which can function as a main structural component of final products, with the exception of natural polymers that have not been chemically modified;

“**prohibited single use plastic item**” means an item of a description set out in Part 1 (prohibited single use plastic items) of Schedule 1 (prohibited single use plastic items);

“**supply**” means supply, whether by way of sale or not and includes the presentation of a product as a promotional prize or gift in the course of a business; and

“**variable monetary penalty**” has the meaning given by subparagraph 1.1.1 of Schedule 3 (enforcement and civil sanctions).

## **PROHIBITED SINGLE USE PLASTIC ITEMS**

### **2. PROHIBITION - SINGLE USE PLASTIC ITEMS**

- 2.1 A person must not, in the course of a business or the activities of a charitable or non-profit organisation, supply or offer to supply to an end user a prohibited single use plastic item listed in Schedule 1 (prohibited single use plastic items).
- 2.2 Paragraph 2.1 does not apply to an excluded bag.
- 2.3 Paragraph 2.1 is subject to the exemptions set out in Parts 2 and 3 of Schedule 2 (exemptions).

## **ENFORCEMENT**

### **3. AUTHORISED OFFICERS**

- 3.1 Pursuant to Section 9(1) of the Law, the Director may in writing authorise officers to enter premises and exercise such powers as are necessary and in accordance with that section, for the purpose of determining whether a requirement of:
  - 3.2 this Ordinance;
  - 3.3 a compliance notice; or
  - 3.4 an enforcement undertaking that has been accepted by the Director, has been or is being contravened.

### **4. CIVIL SANCTIONS**

- 4.1 Schedule 3 (enforcement and civil sanctions) has effect for the purpose of the enforcement of this Ordinance.
- 4.2 In this Ordinance “**civil sanctions**” means the imposition of a variable monetary penalty or compliance notice served in accordance with paragraph 6 of Schedule 3 (enforcement and civil sanctions).

## **OFFENCES AND PENALTIES**

### **5. OFFENCES**

- 5.1 A person who contravenes;
  - 5.1.1 paragraph 2.1 of Section 2 (prohibition – single use plastic items) is guilty of an offence.
- 5.2 A person guilty of an offence under paragraph 5.1 is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

### **6. TRANSITIONAL PROVISIONS**

It is not an offence under Section 6 (offences) if the supply or offer to supply of the prohibited single use plastic item is made within the period of 6 months beginning with the coming into operation of this Ordinance.

7. **DEFENCE OF DUE DILIGENCE FOR SUPPLIERS**

- 7.1 Subject to paragraphs 7.2 and 7.4, in proceedings for an offence under this Ordinance it is a defence for a person ("P") to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence.
- 7.2 P may not rely on a defence under paragraph 7.1 which involves a third-party allegation unless P has:
- 7.2.1 served a notice in accordance with paragraph 7.3; or
  - 7.2.2 obtained the leave of the court.
- 7.3 The notice must:
- 7.3.1 give any information in P's possession which identifies or assists in identifying the person who:
    - (a) committed the act or default; or
    - (b) supplied the information on which P relied; and
  - 7.3.2 be served on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.
- 7.4 P may not rely on a defence under paragraph 7.1 which involves an allegation that the commission of the offence was due to reliance on information supplied by another person unless it was reasonable for P to have relied on the information, having regard in particular to:
- 7.4.1 the steps that P took, and those which might reasonably have been taken, for the purposes of verifying the information; and
  - 7.4.2 whether P had any reason to disbelieve the information.
- 7.5 In this Ordinance, "**third party allegation**" means an allegation that the commission of the offence was due to:
- 7.5.1 the act or default of another person; or
  - 7.5.2 reliance on information supplied by another person.

8. **TIME LIMIT FOR THE PROSECUTION OF OFFENCES**

- 8.1 A prosecution for an offence under paragraph 5.1 of Section 5 (offences) may begin no later than after the expiry of:
- 8.1.1 3 years from the commission of the offence; or
  - 8.1.2 1 year from its discovery by the prosecuting authority, whichever is the earlier.
- 8.2 A prosecution under paragraph 5.2 of Section 5, which results from failure to comply with a notice or undertaking may begin no later than after the expiry of 6 months from the date on which the Director notified the person, who was required to comply with a notice or undertaking, of that person's failure to do so.

9. **CITATION AND COMMENCEMENT**

This Ordinance may be cited as the Single Use Plastics (Guernsey) Ordinance 202[ ] and shall come into force on the date it is approved by the States.

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## SCHEDULE 1

### PROHIBITED SINGLE USE PLASTIC ITEMS

<b>Prohibited Single Use Plastic Items</b>	<b>Prohibited Item Description</b>
Single use plastic stemmed cotton bud	An item that consists of a rod made wholly or partly of plastic with cotton wrapped around one or both ends and that is not designed or intended to be re-used, other than a medical device.
Single use plastic cutlery	Utensils, such as forks, knives, spoons and chopsticks, which are used for eating or serving food and that are made wholly or partly from plastic and that are not designed or intended to be re-used.
Single use plastic plates and bowls	A plate or bowl from which food is eaten or served that is made wholly or partly from plastic and that is not designed or intended to be re-used.
Single use plastic straws	A straw that is made wholly or partly from plastic and that is not designed or intended to be re-used.
Single use plastic beverage stirrer	An implement made wholly or partly from plastic designed and intended for stirring drinks.
Single use plastic balloon sticks	Sticks and the mechanisms of such sticks to be attached to and to support balloons, except balloons for industrial or other professional uses and applications that are not distributed to consumers.
Single use plastic carrier bags	An unused bag made of lightweight plastic with handles that is supplied to the end user by a retailer for immediate use, other than an excluded bag.
Products made from oxo-degradable plastic	Products made from plastic materials that include additives which, through oxidation, lead to the fragmentation of the plastic material into micro-fragments or to chemical decomposition.
Polystyrene food containers for immediate use	Food containers made of expanded polystyrene with or without a cover, used to contain food which —  (a) is intended for immediate consumption, either

	<p>on-the-spot or take-away;</p> <p>(b) is typically consumed from the receptacle; and</p> <p>(c) is ready to be consumed without any further preparation, such as cooking, boiling, or heating, including food containers used for fast food or other meals ready for immediate consumption, except beverage containers, plates and packets and wrappers containing food.</p>
Polystyrene cups or containers	Cups or containers for beverages made of expanded polystyrene, including their covers and lids.

## SCHEDULE 2

### EXEMPTIONS

#### **PART 1 – SINGLE USE CARRIER BAGS**

The following are excluded bags for the purposes of this Ordinance:

<b>Name</b>	<b>Type/Description</b>
Unwrapped food bag	A bag intended to be used solely to contain wholly or partly unwrapped food for human or animal consumption.
Unwrapped loose seeds bag	A bag intended to be used solely to contain wholly or partly unwrapped loose seeds, bulbs, corns, rhizomes, flowers or goods contaminated by soil.
Unwrapped blades bag	A bag intended to be used solely to contain wholly or partly unwrapped axes, knives, knife blades or razor blades.
Prescription-only medicine bag	A bag intended solely to contain drugs or appliances supplied by a pharmacist in accordance with a prescription.
Uncooked meat food bag	A bag intended to be used solely to contain uncooked fish or fish products, meat or meat products or poultry or poultry products.
Live aquatic creatures bag	A bag intended to be used solely to contain live aquatic creatures in water.
Returnable multiple reuse bag	A bag which is sold to the end user and which —  (a) is intended to be returnable to the seller from whom it was purchased to be replaced free of charge;  (b) is made from material the thickness of which is not less than 50 microns but not greater than 70 microns; and  (c) disregarding the width of any gussets, or the height of any handles extending above the main body of the bag  (i) has a width and height greater (in each case) than 404 mm; and

	(ii) has a width or height greater (in either case) than 439 mm.
Woven plastic bag	A bag the material of which is made by interlacing long threads passing in one direction with others at a right angle to them.
Transit goods bag	A bag which is intended to be used to carry goods in a transit place.

For the purposes of determining whether a bag falls within a description listed in the table, the fact that the bag may be intended to be used to contain items referred to in the description relating to any other of those bags is to be disregarded.

In Part 1 “**transit place**” means on board a ship, train, aircraft, coach or bus, or in an area designated by the Committee for Economic Development as a security restricted area under section 11A of the Aviation Security Act 1982 as it applies as part of the law of the Bailiwick of Guernsey by reason of the Aviation Security (Guernsey) Order 1997.

## **PART 2 – SINGLE USE PLASTIC STRAWS**

### **1. EXEMPTION: RETAIL PHARMACY BUSINESSES**

- 1.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single-use plastic straw by a retail pharmacy business in the cases in paragraph 1.2 below, provided that the conditions in paragraph 1.3 below are complied with.
- 1.2 The cases referred to in paragraph 1.1 above are where the single-use plastic straw is supplied to an end user:
- 1.2.1 at a registered pharmacy; or
- 1.2.2 by means of online or other distance selling arrangements.
- 1.3 The conditions are that single-use plastic straws to which Section 2.1 applies:
- 1.3.1 must not be advertised to customers by the retail pharmacy business; and
- 1.3.2 if supplied at a registered pharmacy:
- (a) must not be kept in a place where they are visible to customers, or where customers can access them; and
- (b) must not be offered or provided to a customer unless the customer has requested them.
- 1.4 The condition in paragraph 1.3 above does not prohibit the display of single-use plastic straws for sale on a website or application through which the retail pharmacy business sells products online.
- 1.5 In this paragraph, “**registered pharmacy**” and “**retail pharmacy business**” have the meanings given in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008.

2. **EXEMPTION: CATERING ESTABLISHMENTS**

2.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply by a catering establishment of a single use plastic straw together with food or drink which is supplied for immediate consumption, provided that the single use plastic straws:

2.1.1 must not be kept in a place where they are visible to customers, or where customers can access them; and

2.1.2 must not be offered or provided to a customer unless the customer has requested them.

3. **EXEMPTION: PACKAGING**

3.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single use plastic straw:

3.1.1 that is packaging; or

3.1.2 which is attached to the packaging of a drink product and is intended to be used to consume that drink.

3.2 In this paragraph, "**packaging**" means products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are:

3.3 sales packaging or primary packaging, that is to say packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

3.4 grouped packaging or secondary packaging, that is to say packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale, and which can be removed from the product without affecting its characteristics; or

3.5 transport packaging or tertiary packaging, that is to say packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage; for the purposes of this Ordinance transport packaging does not include road, rail, ship and air containers.

3.6 The following items must also be considered to be packaging on the basis of the criteria set out below:

3.6.1 items that fall within the definition in paragraph 3.2 above without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together;

- 3.6.2 items designed and intended to be filled at the point of sale and disposable items sold, filled or designed and intended to be filled at the point of sale provided they fulfil a packaging function; and
- 3.6.3 packaging components and ancillary elements integrated into packaging, and ancillary elements hung directly on, or attached to, a product and which perform a packaging function, unless they are an integral part of that product and all elements are intended to be consumed or disposed of together.

4. **EXEMPTION: MEDICAL DEVICES AND MEDICAL PURPOSES**

- 4.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single use plastic straw:
  - 4.1.1 that is a medical device;
  - 4.1.2 for use for medical purposes by or under the direction of a health professional; or
  - 4.1.3 by a health professional for medical purposes.

5. **EXEMPTION: OTHER ESTABLISHMENTS**

- 5.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single use plastic straw in:
  - 5.1.1 an adult care home or adult day care centre;
  - 5.1.2 a child-related care service;
  - 5.1.3 a prison or other place of detention; or
  - 5.1.4 a school.
- 5.2 In this Ordinance:
  - 5.2.1 "**adult care home**" and "**adult day care centre**" have the same meaning as "**home**" in the Nursing Homes and Residential Homes (Guernsey) Law, 1976;
  - 5.2.2 "**child-related care service**" has the same meaning as "**day care services**" in The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance 2015;
  - 5.2.3 "**prison**" means a place designated as an institution in accordance with Section 1 of the Prison (Enabling Provisions) (Guernsey) Law, 2010;
  - 5.2.4 "**other place of detention**" includes:
    - (a) a police station; and
    - (b) any part of a court building, being a part where defendants in criminal proceedings are or may be held before, during or after their appearance before a court; and

5.2.5 "school" has the same meaning as in Section 1 of the Education (Guernsey) Law, 1970.

### **PART 3 – SINGLE USE PLASTIC STEMMED COTTON BUDS**

#### **6. EXEMPTION: MEDICAL DEVICES AND MEDICAL PURPOSES**

6.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single use plastic stemmed cotton bud:

6.1.1 that is a medical device;

6.1.2 for use for a medical purpose by or under the direction of a health professional; or

6.1.3 by a health professional for a medical purpose.

#### **7. EXEMPTION: FORENSIC AND SCIENTIFIC PURPOSES**

7.1 Paragraph 2.1 of Section 2 (prohibition – single use plastic items) does not apply to the supply of a single use plastic stemmed cotton bud:

7.1.1 to a forensic service provider; or

7.1.2 for scientific purposes.

7.2 In this paragraph:

7.2.1 "**forensic service provider**" means any person that carries out laboratory activities for the purpose of the prevention, detection or investigation of criminal offences at the request of:

(a) an officer of a police force established in accordance with the Island Police Force Establishment (Guernsey) Law, 1949;

(b) an officer appointed in accordance with the definition in Section 1 of the Customs & Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972; or

(c) an officer as defined in Section 1 of the Prison (Enabling Provisions) (Guernsey) Law, 2010; and

7.2.2 "**scientific purposes**" means diagnostic, educational or research purposes.

### SCHEDULE 3

#### ENFORCEMENT AND CIVIL SANCTIONS

##### 1. IMPOSITION OF A VARIABLE MONETARY PENALTY OR COMPLIANCE NOTICE

- 1.1 Where the Director is satisfied on the balance of probabilities that a person has contravened paragraph 2.1 of Section 2 (prohibition – single use plastic items) the Director may by notice impose:
- 1.1.1 a requirement to pay a monetary penalty to the Committee of such amount as the Director may determine ("**a variable monetary penalty**"); or
  - 1.1.2 a requirement to take such steps as the Director may specify, within such period as he may specify, to secure that the contravention does not continue or recur ("**a compliance notice**").
- 1.2 A requirement under subparagraph 1.1.1 or 1.1.2 above may not be imposed on a person on more than one occasion in relation to the same contravention.
- 1.3 A variable monetary penalty must not:
- 1.3.1 be unreasonable, having had regard to the severity of the contravention;
  - 1.3.2 exceed 10% of the annual turnover in the Bailiwick of Guernsey of the person on whom it is imposed; or
  - 1.3.3 exceed the amount of a fine of level 5 on the uniform scale of fines.
- 1.4 Before serving a notice relating to a variable monetary penalty on a person, the Director may require the person to provide such information as is reasonable for the purpose of establishing the amount of any financial benefit arising as a result of that contravention.

##### 2. NOTICE OF INTENT

- 2.1 Where the Director proposes to serve a variable monetary penalty or a compliance notice on a person, the Director must serve on that person a notice of what is proposed (a "**notice of intent**").
- 2.2 The notice of intent must include:
- 2.2.1 the grounds for the proposed compliance notice or variable monetary penalty;
  - 2.2.2 the requirements of the proposed compliance notice and, in the case of a penalty, the proposed amount to be paid; and
  - 2.2.3 information as to:
    - (a) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was received;
    - (b) the circumstances in which the Director may not impose the variable monetary penalty or compliance notice.



2.3 A person on whom a notice of intent is served may, within 28 days beginning with the day on which the notice was received, make representations and objections to the Director in relation to the proposed imposition of a variable monetary penalty or compliance notice.

2.4 Where a person has made representations or objections under this paragraph, further representations or objections must not be considered by the Director whether or not such further representations or objections are made in accordance with this paragraph.

### 3. **FINAL NOTICE**

3.1 After the end of the period for making representations and objections, the Director must decide whether:

3.1.1 to impose the requirements in the notice of intent, with or without modifications; or

3.1.2 to impose any other requirement that the regulator has power to impose under this Schedule.

3.2 Where the Director decides to impose a requirement, the notice imposing it (the "**final notice**") must comply with paragraph 4, in the case of a variable monetary penalty, or paragraph 5, in the case of a compliance notice.

3.3 The Director must not serve a final notice on a person where the Director is reasonably satisfied that the person would not, by reason of any defence brought to the attention of the Director, be liable to be convicted of an offence in respect of the contravention to which the notice relates if criminal proceedings were to be instigated against the person.

### 4. **CONTENTS OF FINAL NOTICE: VARIABLE MONETARY PENALTY**

4.1 A final notice for a variable monetary penalty must include information as to:

4.1.1 the grounds for imposing the penalty;

4.1.2 the amount to be paid;

4.1.3 how payment may be made;

4.1.4 the period within which payment must be made, which must be not less than 28 days beginning with the date of the notice;

4.1.5 rights of appeal under paragraph 11 (appeals); and

4.1.6 the consequences of failing to comply with the notice.

### 5. **CONTENTS OF FINAL NOTICE: COMPLIANCE NOTICE**

5.1 A final notice relating to a compliance notice must include information as to:

5.1.1 the grounds for imposing the notice;

5.1.2 what compliance is required and the period within which it must be completed which must be not less than 28 days beginning with the date of the notice;

5.1.3 rights of appeal under paragraph 11 (appeals); and

5.1.4 the consequences of failing to comply with the notice.

6. **ENFORCEMENT UNDERTAKINGS**

6.1 Within 28 days of receipt of the notice of intent the recipient may give to the Director a written undertaking to take such action as may be specified in the undertaking within such period as may be so specified (an “**enforcement undertaking**”).

6.2 An enforcement undertaking must specify:

6.2.1 what action will be taken:

- (a) to secure that the contravention does not recur;
- (b) that will secure benefit to the environment equivalent to what has been, or is likely to have been, the detrimental effect of the commission of the contravention; and
- (c) the period within which the action must be completed.

6.3 An enforcement undertaking must include:

6.3.1 a statement that the undertaking is made in accordance with this Schedule;

6.3.2 the terms of the undertaking; and

6.3.3 information as to how and when the recipient is to be considered to have discharged the undertaking.

6.4 Within 28 days of receiving the enforcement undertaking the Director must consider the undertaking and notify the recipient as to whether or not the undertaking has been accepted.

6.5 Where the Director accepts the enforcement undertaking the notification made under subparagraph 6.4 must include:

6.5.1 confirmation that the notice of intent is withdrawn subject to the recipient complying with the enforcement undertaking;

6.5.2 information about the consequences of not complying with the enforcement undertaking;

6.5.3 information about how the recipient may obtain a completion certificate (referred to in Section 6 (completion certificates));

6.5.4 information about the reasons the Director may refuse to issue a completion certificate; and

6.5.5 the recipient’s right to appeal in accordance with paragraph 11 (appeals) against a decision of the Director not to issue a completion certificate.

6.6 If the Director has accepted an enforcement undertaking, then, unless the recipient has failed to comply with the undertaking or any part of it,

- 6.6.1 the recipient may not at any time be convicted of an offence in respect of the contravention to which the undertaking relates; and
- 6.6.2 the Director may not serve a further notice of intent, variable monetary penalty or compliance notice in respect of that contravention.
- 6.7 The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if the Director and the recipient agree in writing.
- 6.8 Where the Director decides not to accept an enforcement undertaking the notice under subparagraph 6.4 must include the reasons for the decision.
- 6.9 Where the recipient has made an enforcement undertaking under this paragraph, further enforcement undertakings submitted by that recipient must not be considered by the Director, whether or not such further enforcement undertakings are made in accordance with this paragraph.

## 7. **COMPLETION CERTIFICATES**

- 7.1 If the Director is satisfied that an enforcement undertaking has been complied with, it must issue a certificate to that effect (a “**completion certificate**”).
- 7.2 The Director may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.
- 7.3 The person who gave the undertaking may at any time apply for a completion certificate.
- 7.4 Within 28 days of receiving an application for a completion certificate the Director must either:
  - 7.4.1 issue a completion certificate;
  - 7.4.2 give written notice of the decision not to issue a completion certificate to the applicant, with reasons for that decision.
- 7.5 Where the Director is not satisfied that an enforcement undertaking has been complied with and has given written notice under subparagraph 7.4.2, the person on whom that notice is served may appeal against the Director’s decision in accordance with paragraph 11 (appeals).
- 7.6 A person who has given inaccurate, misleading or incomplete information in relation to an enforcement undertaking is to be taken not to have complied with it.
- 7.7 The Director may by notice in writing revoke a certificate issued under this paragraph if it was issued on the basis of inaccurate, misleading or incomplete information.

## 8. **NON-COMPLIANCE**

- 8.1 A person who fails to comply with:
  - 8.1.1 a final notice relating to a compliance notice; or
  - 8.1.2 an enforcement undertaking that has been accepted by the Director, is guilty of an offence.

- 8.2 A person guilty of an offence under subparagraph 8.1 is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.
- 8.3 If a person has complied partly but not fully with a final notice or enforcement undertaking, that partial compliance must be taken into account by the court when sentencing the person.

9. **WITHDRAWING OR AMENDING A NOTICE**

9.1 The Director may at any time in writing:

- 9.1.1 withdraw or suspend a notice;
- 9.1.2 reduce the amount of a variable monetary penalty; or
- 9.1.3 amend the requirements imposed by a compliance notice in order to reduce the amount of work necessary to comply with that notice.

10. **POWER TO RECOVER PAYMENTS**

The Director may recover any variable monetary penalty imposed under this Schedule as if payable under a court order.

11. **APPEALS**

11.1 An appeal against:

- 11.1.1 a final notice served under paragraph 3 (final notice); or
- 11.1.2 a decision of the Director not to issue a completion certificate under paragraph 7 (completion certificates);

is to the Magistrate's Court.

11.2 The final notice is suspended pending the determination or withdrawal of the appeal.

11.3 The Magistrate's Court may, in relation to the imposition of a requirement or penalty or the service of a notice under this Schedule:

11.3.1 withdraw the final notice or decision;

11.4 confirm the final notice or decision;

11.4.1 vary the final notice or decision;

11.4.2 take such steps as the Director could have taken in relation to the contravention giving rise to the requirement, penalty or notice; or

11.4.3 remit the decision whether to confirm the final notice, decision, or any matter relating to that notice or decision, to the Director.

## **EXPLANATORY NOTE**

(This note is not part of the Ordinance)

This Ordinance prohibits the supply of certain single use plastic items and contributes to alignment with EU Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

Section 2 creates a prohibition on the supply, in the course of a business of the single use plastic items, set out in Schedule 1, to an end user. The prohibition is subject to certain exemptions, as set out in Schedule 2.

Section 3 enables the Director to authorise officers for the purposes of enforcing this Ordinance.

Section 4 enables the Director to impose civil sanctions, as set out in Schedule 3, in relation to offences under this Ordinance.

Section 5 sets out the offences under this Ordinance and the relevant penalties.

Section 6 provides for a six-month transitional period following the commencement of this Ordinance during which it is not an offence to supply prohibited single use plastic items.

Section 7 provides a defence for suppliers who have committed an offence but have undertaken all reasonable steps and exercised all due diligence to avoid committing the offence.

Section 8 sets out the time limits for the prosecution of offences under this Ordinance.

Schedule 1 sets out the single use plastic items the supply of which to the end user is prohibited under Section 2 and describes those items. This Schedule also includes information as to similar items which are not prohibited.

Schedule 2 sets out exemptions from the prohibition in Section 2. Part 1 lists excluded bags, i.e. the types and uses of single use plastic bags that are not prohibited.

Part 2 sets out exemptions in relation to single use plastic straws for certain businesses and uses.

Part 3 sets out exemptions in relation to single use plastic stemmed cotton buds for certain businesses and uses.

Schedule 3 sets out the civil sanctions which the Director may impose in relation to contravention of this Ordinance and provides for the actions a person, upon whom the sanctions are imposed, may take.